

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

UNITY HEALTH PLANS INSURANCE
CORPORATION
840 Carolina Street
Sauk City, WI 53583,

Case No. 13-CV-845

Plaintiff,

v.

IOWA HEALTH SYSTEM d/b/a
UNITYPOINT HEALTH
1776 West Lakes Parkway, Suite 400
West Des Moines, Iowa 50266,

Defendant.

COMPLAINT

Plaintiff, Unity Health Plans Insurance Corporation, ("Unity") by its attorneys, Michael Best & Friedrich LLP, states for its Complaint against Defendant Iowa Health System d/b/a UnityPoint Health ("UnityPoint"), the following:

NATURE OF THE CONTROVERSY

1. This is an action for a permanent injunction to enjoin UnityPoint from using its "UNITYPOINT" name and mark in the geographic areas where Unity currently does business, and where it has priority, because the name and mark are likely to cause confusion and mistake regarding the affiliation, connection, sponsorship or association between UnityPoint's goods and services and those of Unity.

PARTIES

2. Plaintiff Unity Health Plans Insurance Corporation is a Wisconsin insurance corporation with its principal place of business at 840 Carolina Street, Sauk City, WI 53583.

3. Defendant Iowa Health System is an Iowa non-profit corporation with its principal place of business at 1776 West Lakes Parkway, Suite 400, West Des Moines, Iowa 50266.

4. In April 2013, Iowa Health System began doing business as UnityPoint Health with the intention that UnityPoint Health would be its trade name and trademark.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), because Unity's claim is brought under § 43 of the Lanham Act, 15 U.S.C. § 1125.

6. Venue lies in the United States District Court for the Western District of Wisconsin pursuant to 28 U.S.C. § 1391(b)(2) because the District has personal jurisdiction over Defendant and a substantial part of the events or omissions giving rise to the claim occur in this District.

BACKGROUND FACTS

A. Unity's Long-Standing, Consistent And Exclusive Use Of The "UNITY" Name And Mark In Southern Wisconsin.

7. Unity is a Health Maintenance Organization Insurer ("HMO Insurer") as defined by § 600.03(23c) of the Wisconsin Statutes and organized under chapter 611 of the Wisconsin Statutes.

8. As an HMO Insurer, Unity is an integrated managed healthcare insurance business as opposed to a mere insurance business.

9. The insurance portion of Unity's business is dependent on, and integrated with, its delivery of healthcare services.

10. Unity, as an HMO Insurer, is required to offer an adequate provider network, including hospitals, primary care physicians, specialists and ancillary providers, and to manage the continuity of care by those providers, the quality of the contracting providers' care, and regulatory compliance by those providers.

11. The service Unity principally markets is its management of the contracted healthcare providers, including enrollees' access to Unity's affiliated healthcare provider UW Health.

12. Unity's advertising and marketing emphasizes its unique provider network and the quality of the healthcare services provided through Unity's management services.

13. Since 1995, Unity has continuously and exclusively used the trade name and trademark "UNITY" in connection with its managed healthcare insurance services provided in Southern Wisconsin.

14. Unity specifically services the following counties:

- Dane
- Crawford
- Grant
- Iowa
- Lafayette
- Green
- Rock
- Walworth
- Jefferson
- Dodge
- Columbia
- Sauk
- Richland
- Vernon
- Juneau
- Adams
- Waushara
- Marquette
- Green Lake
- Fond du Lac

(Collectively referred to as the "Unity Territories").

15. Unity has over 100,000 insured individuals in Dane County alone.

16. Although Unity's HMO services are limited to the Unity Territories, it can write insurance anywhere in Wisconsin.

17. Because some employees of Wisconsin-based companies that supply UNITY healthcare live outside Wisconsin, Unity's use of the name and mark "UNITY"

has spread beyond the Unity Territories to portions of Northern Illinois and Northeastern Iowa, specifically Dubuque, Iowa.

18. In 2005, Unity became a wholly owned subsidiary of University Health Care, Inc. (“UHC”) and an affiliate of the University of Wisconsin Hospitals and Clinics Authority (“UWHC”) and the University of Wisconsin Medical Foundation, Inc. (“UWMF”).

19. UHC, UWHC and UWMF are referred to jointly in the Wisconsin medical services marketplace as UW Health.

20. Since 2005, Unity has expended great effort to market and advertise its relationship and affiliation with UW Health.

21. For example, on its website and in its promotional materials Unity specifically states that it is affiliated with UW Health.

22. Unity’s website, which provides information regarding its services, is located at **unityhealth.com**. In addition to insurance information, Unity’s website provides general medical information, a tool to search for medical providers, information regarding pharmaceuticals, and other resources and information for consumers of medical services.

23. Unity’s continuous and exclusive use of the name and mark “UNITY” in the Unity Territories for 19 years in connection with health management and insurance services has resulted in a strong association in the public’s mind between Unity and such services.

24. Over the last 8 years Unity has vigorously promoted its affiliation with UW Health which has created an even stronger affiliation and association in the public's mind between Unity and healthcare and medical services.

25. As a result of Unity's long-standing continuous and exclusive use of UNITY, it has established common law trademark rights in UNITY in the Unity Territories.

26. Health insurance and healthcare consumers in the Unity Territories associate the name "UNITY" with Unity.

27. Unity's efforts have resulted in the "UNITY" name and mark becoming well-known in the Unity Territories.

28. The UNITY trademark is a strong, arbitrary mark, entitled to a broad scope of protection in the Unity Territories, in connection with healthcare-related services, including insurance and medical care.

B. UnityPoint's Recent Use Of The "UNITYPOINT" Mark And Name In Iowa And Wisconsin.

29. Iowa Health System was initially formed in 1994 as an Iowa nonprofit corporation.

30. In April 2013, Iowa Health System began doing business as UnityPoint Health and changed its promotional materials, official documents, etc. to include the name and mark "UNITYPOINT."

31. UnityPoint's website is located at **unitypoint.org**. In addition to the information on UnityPoint's website regarding medical providers, the website includes

information regarding insurance coverage and the “health insurance marketplace,” demonstrating the close relationship between healthcare and health insurance.

32. As of June 2013, UnityPoint directly or indirectly controlled a regional healthcare delivery system that included twelve hospitals in ten Iowa cities, three hospitals in three Illinois cities and approximately 700 employed physician full time equivalents and 295 mid-level provider full time equivalents practicing in Iowa and Illinois.

33. Effective October 20, 2013 UnityPoint and Meriter Health Services entered into an Affiliation Agreement.

34. As of April 2013, UnityPoint began using the name and mark “UNITYPOINT” in Iowa and Illinois. As of October 2013, UnityPoint began using the name and mark “UNITYPOINT” in Wisconsin. These uses were long after Unity established its common law rights within the Unity Territories.

35. Meriter Health Services provides healthcare services to Dane County and the surrounding communities.

36. Meriter Health Services provides healthcare services within the Unity Territories and directly competes with Unity’s affiliated healthcare provider, UW Health.

37. UnityPoint is also in the process of acquiring Physicians Plus Insurance Corporation, which is Meriter’s affiliated insurance company.

38. Physicians Plus Insurance Corporation is a for-profit HMO Insurer.

39. Physicians Plus Insurance Corporation provides managed healthcare insurance services within the Unity Territories and is a direct competitor with Unity.

40. Upon information and belief, when UnityPoint completes its acquisition of Meriter Health Services' assets, Meriter's name will be changed to UnityPoint Health-Meriter.

41. Upon information and belief, UnityPoint is using its name and mark "UNITYPOINT" in association with Meriter's medical services and Physicians Plus Insurance Corporation's insurance.

42. Meriter has sent out a letter to its customers informing them of its affiliation with UnityPoint and that the affiliation will not change either Meriter's or Physicians Plus Insurance Corporation's services. (See Exhibit A attached hereto).

C. Consumer Confusion Between "UNITY" And "UNITYPOINT."

43. The names "UNITYPOINT" and "UNITY" are almost identical as both include the term "UNITY," and "UNITY" is dominant in each mark.

44. UnityPoint's healthcare services are similar to Unity's managed healthcare insurance services, particularly since, as noted above, Unity is an HMO Insurer that markets its services with an emphasis on its affiliated healthcare providers and both parties offer information concerning the others' core service area in connection with their website.

45. Consumers regularly choose their healthcare service provider based on the affiliation between the healthcare service provider and their health insurance provider.

46. It is important to consumers with health insurance that a healthcare service provider is a preferred provider organization or a participating provider organization under the consumer's health insurance policy.

47. A preferred provider organization or a participating provider organization is a managed care organization of medical doctors, hospitals, and other healthcare providers who have covenanted with an insurer to provide healthcare at reduced rates to the insurer's clients.

48. In seeing the name and mark "UNITYPOINT" used together with Meriter, consumers and particularly Unity and Physician Plus Insurance Corporation HMO potential enrollees and current enrollees will likely be confused regarding whether UnityPoint medical services, such as a "UnityPoint Clinic" or "UnityPoint Doctor," are affiliated with Unity, Unity's network providers or UW Health providers.

49. Consumers in the Unity Territories will instinctively attribute UnityPoint's medical services to a single source: Unity.

50. UnityPoint's use of the term "UNITY" in the Unity Territories will likely cause consumer confusion regarding the source of UnityPoint's medical services, whether Unity and UnityPoint are associated or affiliated, whether UnityPoint's medical services are sponsored or approved by Unity and whether UnityPoint is a preferred provider organization in all instances.

51. UnityPoint's president and CEO, Bill Leaver, has recognized and acknowledged that there will be consumer confusion about any affiliation or sponsorship between UnityPoint and Unity. (See Exhibit B attached hereto.)

COUNT I
VIOLATION OF § 43 OF THE LANHAM ACT (15 U.S.C. § 1125(a)(1)(A))

52. Unity restates and realleges Paragraph 1 through 51 above as though set forth fully herein.

53. UnityPoint uses the name and mark “UNITYPOINT” in conjunction with healthcare services in interstate commerce between Iowa, Illinois and Wisconsin.

54. UnityPoint’s use of the name and mark “UNITYPOINT” in the Unity Territories commenced long after Unity’s first use of UNITY, and therefore Unity has priority and superior rights in the Unity Territories.

55. UnityPoint’s use of the name and mark “UNITYPOINT” in the Unity Territories is likely to cause confusion or mistake as to the affiliation, connection or association between UnityPoint and Unity.

56. The goodwill and prominence of Unity’s name and mark “UNITY” will be irreparably damaged by public confusion of “UNITY” with “UNITYPOINT.”

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Unity Health Plans Insurance Corporation respectfully requests that this Court grant judgment in their favor against Defendant Iowa Health System d/b/a UnityPoint Health as follows:

A. Permanently enjoining UnityPoint from using the name and mark “UNITYPOINT,” or any other name or mark that incorporates UNITY or a colorable imitation, in the Unity Territories;

B. Deem this an exceptional case and award Unity its attorney's fees and costs under 15 U.S.C. § 1117(a); and

C. Any and all other relief the Court deems reasonable to make Plaintiff whole.

JURY DEMAND

In accordance with Federal Rule of Civil Procedure 38, Plaintiff demands a jury trial.

Dated this 9th day of December, 2013.

MICHAEL BEST & FRIEDRICH LLP

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